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To: Nursing Homes

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From: Cris Ros-Dukler, Director
Bureau of Quality Assurance

Smoking Policy in Nursing Homes

The Bureau of Quality Assurance continues to receive questions concerning smoking policies in federally certified and state-licensed nursing homes. This memo will reiterate and amplify many of the issues addressed in BQA memo 98-063. The major purpose in reissuing this memo is to encourage facilities to:

- (1) Develop comprehensive and explicit written policies and procedures concerning smoking. The clearer and more explicit a facility's policy is, the less likely that conflicts will arise later and, if conflicts arise, the more likely they will be resolved easily.
- (2) Balance the rights of residents with (a) the right of the facility to prohibit smoking within the building and/or on facility grounds, and (b) the necessity of protecting non-smokers from the dangers of second-hand smoke.

General Bureau Philosophy:

While the Bureau of Quality Assurance recognizes the dangers of smoking, we also recognize that some older individuals have smoked for years and take pleasure in the act of smoking and related social interactions. We are also cognizant of the fact that while the nursing home is a place of employment for some, it is home for others. The guiding principles in the development of this memo are:

- The Wisconsin Clean Indoor Air Act (section 101.123, Wis. Stats.), which prohibits smoking in all *inpatient health care facilities* (which includes nursing homes) unless the person in charge, or his or her agent, designates smoking area(s) in the facility.
- The right of each facility to develop its own policies and procedures for smoking in the facility and on the facility grounds. These policies must comply with any overriding local ordinances related to smoking.

- The responsibility of facilities to accommodate and meet the needs of all residents. Facilities are responsible for finding “options that most meet the physical and emotional needs of each resident” (Guidance for 42 CFR 483.15 (g)(1)[F250]) and for accommodating “an individual’s needs and choices for how he/she spends time, both inside and outside the facility.” (Guidance for 42 CFR 483.15(d) [F245].
- Residents' rights to make choices about aspects of their lives in the facility that are significant to them. CMS interprets this to mean that residents are “grandfathered” under the smoking policy in effect when they were admitted. Guidance for 42 CFR 483.15 (b)(3)[F242] says, “...if a facility changes its smoking policy and prohibits smoking, it must allow current residents who smoke to continue smoking in an area that maintains the quality of life for these residents.”
- The facility’s responsibility to inform a resident, either before or at the time of admission, of his or her rights and all rules and regulations governing resident conduct. [42 CFR 483.10 (b)(1)].

Facility smoking policies: BQA encourages facilities to develop written policies and procedures that clearly identify:

- whether smoking is allowed and where it is allowed;
- what accommodations for smoking are provided; and
- the type of staff assistance that will be given with smoking.

These policies and procedures should be clearly explained orally and in writing to all new or prospective admissions. A facility policy that clearly articulates smoking restrictions will allow potential residents to determine if they can abide by the conditions of the policy when they are considering admission. An explicit policy will also help deter or settle issues that might arise concerning smoking.

As you develop your policies, please keep the following in mind: Some individuals who are admitted to a facility that permits smoking may have or develop serious physical, mental or cognitive disabilities. These residents do not lose their right to smoke because they need monitoring and assistance by facility staff for safety. A facility’s smoking policy, however, may provide reasonable limitations and restrictions on a resident’s right to receive staff assistance to smoke (time of day, weather conditions, frequency, type of assistance that will or will not be provided, including assistance with the actual act of smoking, etc). The clearer the policy, the less likely that conflicts will arise later.

In all cases involving residents who are able to smoke safely and without assistance, staff must help transport the residents to and from the smoking area if the resident needs this type of assistance. This includes transporting residents living in a secure unit to and from the designated smoking area and monitoring their whereabouts once at the designated smoking area. For residents who are not able to smoke independently, facility policy may establish reasonable limitations and restrictions concerning the amount and type of staff assistance that will be given with smoking.

Surveyors will determine whether a facility is honoring the right of residents to make choices about aspects of their lives in the facility that are significant to them in regard to smoking by evaluating how the facility's smoking policies are being implemented.

A number of scenarios are provided below to assist you in clarifying your smoking policies, while fulfilling your mission of meeting the physical and emotional needs of residents.

- **Facility has no policy prohibiting smoking and there are no city/county ordinances that prohibit it.** The Wisconsin Clean Indoor Air Act (section 101.123(4)(a)1, Wis. Stats.), permits smoking in an inpatient health care facility only if the person in charge, or his or her agent, designates smoking area(s) in the facility. Smoking is not allowed within the nursing home if the person in charge or his/her agent has not designated a smoking area.
- **Facility policy allows smoking and there are no city/county ordinances that prohibit it.** Under the Wisconsin Clean Indoor Air Act, the person in charge may not designate the entire facility as a smoking area. Section 101.123(5), Wis. Stats., requires either the person in charge or his or her agent to post signs identifying designated smoking areas and to arrange seating to accommodate nonsmokers.

Facilities need to assure that the rights of all smoking and non-smoking residents are protected. Facilities should be particularly conscious of the dangers of second-hand smoke, and should strive to protect the rights and health of nonsmokers. Physical plant characteristics should be taken into account when designating a smoking area, including its proximity to rooms where residents may be subject to second-hand smoke.

- **Facility policy allows smoking in designated areas but a local unit of government passes an ordinance or resolution prohibiting smoking.** If a local unit of government, such as the fire marshal or city/county board, passes an ordinance or resolution prohibiting smoking, the facility must change its policy beginning with the effective date of the ordinance or resolution. When there is a change in law or in facility policies governing resident conduct, federal and state nursing home regulations require the facility to give oral and written notice of the change to the resident or legal representative in a language the resident or legal representative understands. (42 CFR 483.10(b)(1)[F156], HFS 132.31(1)(d)(intro.) and 1.h., Wisconsin Administrative Code). The federal regulation also requires the nursing homes to obtain written confirmation from each resident or legal representative acknowledging his/her receipt of the notice of the change.

Under this scenario, residents retain the right to smoke outside the building. Conditions and requirements for outdoor smoking are addressed later in this memo. Current residents are not grandfathered in terms of smoking inside the building.

- **Facility changes its policy and becomes a non-smoking facility or campus.** If a nursing home changes policy by either (a) prohibiting all smoking within the building or (b) prohibiting smoking in the building and on facility grounds, this must be clearly stated in a

revised admission agreement. The facility should notify the community, potential visitors, referral sources, and current residents of the change. Residents who are admitted on or after the effective date of the policy are subject to the new restrictions.

The facility must make reasonable accommodations, however, for residents who were admitted prior to the change. This is in keeping with the resident's right to make choices about aspects of his or her life that are significant to the resident. (42 CFR 483.15(b)(3) [F154]). This applies to all such residents, including residents who transfer from one unit to another, and those who live in a closed unit, e.g., a locked, secured or supervised unit.

Designated outdoor smoking areas: If facility policy allows residents to smoke outdoors, facilities should strive to protect the rights and health of nonsmokers. A designated smoking area located outside should be in an easily accessed area adjacent to the facility that is protected from the weather (e.g., covered, wall or fence on one side if there are winds typically from one direction, etc.). The area or areas must protect nonsmokers from the potential hazards of second-hand smoke.

For any nursing home considering becoming a non-smoking facility or campus, we reiterate the advice provided in BQC-91-007 (January 30, 1991). While "we are all keenly aware of the dangers of smoking, we also recognize that many residents have smoked for years...and depriving them of the opportunity to smoke could be counterproductive to their welfare. We encourage consideration of the residents' rights issues and accommodations for those who wish to smoke, and strongly urge that before implementing total smoking restriction in your facility, the psychological and social impact upon your residents be carefully reviewed."

If you have additional questions, please contact the Regional Field Operations Director assigned to your facility. The names and phone numbers of the Regional Field Operations Directors are listed below:

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